



## Memo

Date: July 1, 2016

To: Phase I and II MS4s

From: Tisha Calabrese Benton

A handwritten signature in blue ink, appearing to be "Tisha Calabrese Benton", written over the "From:" line.

Re: Public Chapter 1007

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Dear MS4,

We are writing to you in regards to Public Chapter 1007 which was recently enacted by the Tennessee General Assembly and has become law. (Attached). We have received many questions from MS4 jurisdictions about how the new law affects their local stormwater management efforts.

The current Phase I and Phase II MS4 permits remain in full force and effect, and TDEC expects permittees to meet the requirements of their permit; however, jurisdictions that were previously granted an extension related to the implementation of post-construction stormwater management requirements may still rely upon the extension related to that portion of the permit. The recent change in the law did not invalidate the current Phase I and Phase II MS4 permits. In the Phase I and Phase II permits, TDEC has attempted to define what maximum extent practicable<sup>1</sup>, the federal requirement, means in a way that recognizes the need for flexibility in implementing post-construction stormwater controls. The recent change in the law merely references minimum requirements of federal law, i.e. the maximum extent practicable standard but, does not otherwise define that phrase. The current Phase I and Phase II MS4 permits were approved by EPA and developed in response to federal law.

Additionally, the recently enacted law requires local post-construction stormwater control measures that exceed federal requirements to be provided to the local legislative body in writing and adopted by resolution or ordinance, no less than 30 days after notice of the measures is given. The new law does not explicitly provide grandfathering protection for MS4 jurisdictions that have adopted post construction stormwater measures that exceed federal law if the measure was adopted by a legal mechanism other than ordinance or resolution; however, the new law grandfathers (protects) pre-existing post-construction ordinances and resolutions until your MS4 jurisdiction seeks coverage under a new NPDES permit.

Although the new law impacts both Phase I and Phase II MS4 communities, Phase II communities will see the effects more quickly because the new Phase II MS4 General Permit is scheduled to be finalized this summer. We hope this memo helps to clarify how the new law may affect your stormwater program, and are committed to remaining in contact with you as we prepare to issue the new Phase II permit.

Feel free to contact Robert Karesh at (615) 253-5402 or [Robert.karesh@tn.gov](mailto:Robert.karesh@tn.gov) with your feedback and questions.

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<sup>1</sup> **Clean Water Act Section 402 (p)(3)(B)(iii)** - Permits for discharges from municipal storm sewers...shall require controls to reduce the discharge of pollutants to the **maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.



# *State of Tennessee*

## **PUBLIC CHAPTER NO. 1007**

### **SENATE BILL NO. 1830**

**By Southerland, Kelsey, Gardenhire, Green, Bell, Beavers, Bowling, Crowe, Jackson, Niceley,  
Norris, Roberts, Stevens, Tate**

Substituted for: House Bill No. 1892

By Halford, Lollar, Sparks, McManus, Holt, Kevin Brooks, Howell, Carter, Marsh, Eldridge, Casada,  
Alexander, Byrd, Cameron Sexton, Harry Brooks, Littleton, Jenkins, Todd, Moody, Pitts, Forgety,  
Sanderson, Matlock, Durham, Gravitt, Reedy, Zachary, DeBerry, Rogers, Butt, Goins, Johnson,  
Miller

AN ACT to amend Tennessee Code Annotated, Title 69, Chapter 3, Part 1, relative to post construction storm water requirements for municipal separate storm sewer systems.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following as new, appropriately designated subsections:

(s) Any national pollutant discharge elimination system (NPDES) permit issued pursuant to this section to a local governmental entity administering a municipal separate storm sewer system shall not impose post-construction storm water requirements, except to the extent necessary to comply with the minimum requirements of federal law. Any such NPDES permit that includes numeric or narrative effluent limitations to manage post-construction storm water shall allow the local governmental entity administering a municipal separate storm sewer system discretion in selecting measures to meet any such effluent limitations.

(t) This state shall not require any local governmental entity that administers a municipal separate storm sewer system under a national pollutant discharge elimination system (NPDES) permit issued pursuant to this section to impose control measures for post-construction storm water that exceed the minimum requirements of federal law. Any local governmental entity that adopts control measures that exceed the minimum requirements of federal law must do so by ordinance or resolution, as appropriate, by the local legislative body upon a majority vote. This subsection (t) shall not apply to any ordinance or resolution in effect on the effective date of this act, but shall not preclude a local governmental entity that administers a municipal separate storm sewer system from making changes consistent with subsection (s) and this subsection (t). When a local governmental entity seeks coverage under any future version of the NPDES permit after the effective date of this act, such ordinance or resolution shall comply with subsection (s) and this subsection (t). The local government entity shall provide in writing the control measures that exceed federal minimum requirements to the local legislative body at least thirty (30) days in advance of a vote in order to provide for a public comment period.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1830

PASSED: April 7, 2016

  
RON RAMSEY  
SPEAKER OF THE SENATE

  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 22<sup>nd</sup> day of April 2016

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BILL HASLAM, GOVERNOR



**BILL HASLAM**  
GOVERNOR  
STATE OF TENNESSEE

April 22, 2016

The Honorable Ron Ramsey  
Lieutenant Governor and Speaker of the Senate  
Suite 1, Legislative Plaza  
301 6th Avenue North  
Nashville, TN 37243

RE: Senate Bill 1830/House Bill 1892

Lieutenant Governor Ramsey:

I am letting Senate Bill 1830 become law without my signature.

I have concerns about the potential impacts of this legislation and the limits it places on the State's ability to protect our water resources adequately. In addition, the bill imposes on local governments a cumbersome procedural mechanism that will cause confusion for those communities as they seek to implement required storm water pollutant removal programs. I am concerned that some of the ambiguous and confusing language in the bill could lead to costly litigation. As Governor, I am a strong proponent of economic growth and development, but I am equally committed to ensuring that we protect Tennessee's air, land and water resources for today and for future generations of Tennesseans.

Respectfully,

A handwritten signature in black ink, appearing to read "Bill Haslam", written over a horizontal line.

Bill Haslam

cc: The Honorable Beth Harwell, Speaker of the House

